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Brannan, Joseph Doddridge

Opinion of J.D. Brannan ... and Samuel Williston

[Philadelphia]

[1915?]

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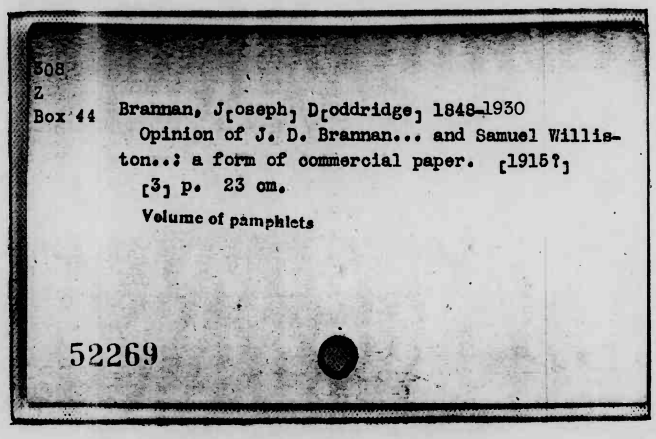

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Opinion of

J. D. BRANNAN, ESQ.
Professor of Negotiable Instruments and Partnership

and

SAMUEL WILLISTON, ESQ.
Professor of Contracts, Sales and Bankruptcy

Law School of Harvard University
Cambridge, Mass.

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A Form of Commercial Paper

Sent out with the Compliments of George H. Paine, Philadelphia, Pa.

LAW SCHOOL OF HARVARD UNIVERSITY

Cambridge, Mass., June 21, 1915.

We have carefully considered the foregoing form, and in our opinion it is a negotiable instrument, and is eminently calculated to serve the purpose for which it has been prepared.

In Overton v. Tyler, 3 Barr. 346, 347, Gibson, C. J., said: "A negotiable bill or note is a courier without luggage." This celebrated remark has often been quoted in arguing against the negotiability of an instrument.

But the question is, what is luggage?

In Cudahy Packing Co. v. State Nat. Bank, 134 Fed. Rep. 538, 542, Amidon, J., in holding that a provision for the payment of attorney's fees in case a note is not paid at maturity does not destroy its negotiability, said: "The rule requiring certainty in commercial paper was a rule of commerce before it was a rule of law. It requires commercial, not mathematical certainty. An uncertainty which does not impair the functions of negotiable instruments in the judgment of business men ought not to be regarded by the courts. The fine phrase of Chief Justice Gibson in the case of Overton v. Tyler, 3 Barr. 346, that a negotiable instrument is a 'courier without luggage' has been made to do much service in the discussion of this subject. The real question, however, is, who shall determine what constitutes 'luggage', the business world or the judge in his library?"

M 13 12, June 9, '17

The question to be asked here is, are the clauses in the instrument in question which follow the promise "luggage"? Do they, in the light of the usages of the business world clog the circulation of the instrument?

Certainly not. On the contrary, they facilitate it by giving on the face of the instrument, without recourse to a number of additional documents, assurances that the money is not borrowed for mere speculation or for investment or to pay a debt, the consideration for which has already been consumed, but that the promise of the maker springs out of a real transaction in which the promisor has received value which is paid for by the proceeds of the discount of the instrument and which can be used to put the maker in funds to pay the instrument when due.

J. B. Braman.

Samuel Williston

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